

REMARKS

The Office Action dated October 4, 2010, has been received and reviewed. Claims 1-21 are pending in the application. Claim 1-21 stand rejected. Applicant has amended claims 1-7, 9-19 and 21, and respectfully requests reconsideration of the application as amended herein. Support for Applicant's claim amendments is found in at least FIG. 8 of Applicant's as-filed specification. No new matter has been added.

35 U.S.C. § 102(e) Anticipation Rejections

Anticipation Rejection Based on U.S. Patent No. 6,771,700 to Razoumov et al.

Claims 1-21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,771,700 to Razoumov ("Razoumov"). Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The 35 U.S.C. § 102(e) anticipation rejections of claims 1-21 are improper because Razoumov does not describe, either expressly or inherently, ***the identical inventions in as complete detail as are contained in the claims***.

Applicant's specification and unamended claims recite the term "*first* transmission" as being indicative of an "*initial* transmission" of data while the term "retransmission" of *the* data clearly describes a subsequent transmission of *the* initial or first data. However, Applicant respectfully acknowledges that such a distinction of an initial transmission of data and a subsequent transmission of ***the same data*** is being inconsistently applied in examination of Applicant's invention as claimed. Accordingly, Applicant has amended all references to a "*first* transmission" to instead recite "*initial* transmission" to more clearly illustrate data as being transmitted initially in an "initial transmission" or subsequently in a "retransmission". Applicant respectfully notes that initial transmissions and retransmissions are separate transmissions with separate error rates and separate energy setpoints.

Generally, Applicant's invention, as presently claimed, recites receiving both initial transmission frame error rates and retransmission frame error rates and then determining an initial transmission energy setpoint *based on a frame error rate of the initial transmission frame error rate and not the retransmission frame error rate*. Specifically, Applicant's amended independent claims 1, 6, 14 and 18 recite, *inter alia*, "an initial transmission energy setpoint as a function of the initial transmission frame error rate and an initial transmission quality *and exclusive of any retransmission frame error rate*" (independent claims 1 and 14) and "the initial transmission energy setpoint on occurrence of an initial transmission error in the initial transmission at a processor *and exclusive of any retransmission frame error rate*" (independent claims 6 and 18).

In contrast, Razoumov does not appear to have two independently adjustable setpoints used to perform independent steps nor is the initial setpoint based upon an error rate of the initial transmission of the data and not based on any error rate of the retransmission of the data. Specifically, at least Applicant's claimed element of an "initial transmission energy setpoint" as a function of initial transmission error rate "and exclusive of any retransmission frame error rate" are not disclosed in Razoumov.

First, Applicant respectfully notes that while "*adjustments are made on occurrences of transmission errors*", Razoumov discloses adjustments based on occurrences of errors in a different type of transmission (initial or retransmission) while Applicant claims adjustments based on occurrences of errors in that same type of transmission. Specifically, occurrences of errors in the *initial transmission of the data* affect the adjustment to the initial transmission energy setpoint while occurrences of errors in a *retransmission of the data* do not affect the adjustments to the *initial transmission of the data*. Applicant does not dispute that Razoumov discloses adjusting energy levels, however, Razoumov's approach is not the same approach for adjusting as claimed by Applicant in amended independent claims 1, 6, 14 and 18.

According to Razoumov, Razoumov's adjustments to the power level for a successive transmission is based upon the outcome (e.g., frame error rate) of the previous transmission. Specifically, Razoumov discloses the power levels of successive transmissions (e.g., retransmission 1, retransmission 2, etc.) are based upon the outcome of the previous transmissions (e.g., transmission, retransmission 1, etc.) and not based upon the outcome of that same type of transmission. (Razoumov, col. 4, lines 30-40, col. 3, lines 62-63 and col. 7,

formula 22). In other words, Razoumov discloses adjusting a subsequent transmission's power level based upon the outcome of the immediately previous transmission.

In distinct contrast, Applicant's invention as claimed in amended independent claims 1, 6, 14 and 18 recite, in part, "*an initial transmission energy setpoint as a function of the initial transmission frame error rate and an initial transmission quality **and exclusive of any retransmission frame error rate***" (independent claims 1 and 14) and "*the initial transmission energy setpoint on occurrence of an initial transmission error in the initial transmission at a processor **and exclusive of any retransmission frame error rate***" (independent claims 6 and 18). Accordingly, Applicant's invention as presently claimed in amended independent claims 1, 6, 14 and 18 are not disclosed in "*as complete detail as is contained in the claim*" as is required for anticipation under 35 U.S.C. §102. Therefore, Razoumov cannot anticipate under 35 U.S.C. §102 Applicant's invention as presently claimed in amended independent claims 1, 6, 14 and 18, and claims 2-5, 7-13, 15-17 and 19-21 respectively depending therefrom.

Accordingly, such claims are allowable over the cited prior art and Applicant respectfully requests that such rejections be withdrawn.

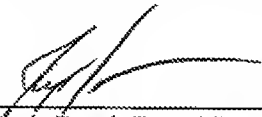
CONCLUSION

Claims 1-21 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicant's undersigned representative.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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